

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 85 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?-No.
 2. To be referred to the Reporter or not?-No.
 3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
 5. Whether it is to be circulated to the Civil Judge?-No.

MAHEMDRA ELECTRICALS LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

Mr.J.P. Shah, Advocate, for the applicant.
Mr.M.J. Thakore, Advocate, instructed by
MR MANISH R BHATT for the Respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 03/02/97

ORAL JUDGEMENT : (Per R.K. Abichandani, J.)

Following question has been referred by the Income Tax Appellate Tribunal, Ahmedabad for the opinion

of this Court :-

" Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that payment of commission as aforesaid to the Managing Director was includible as remuneration for determining the disallowance u/s. 40(c) of the I.T. Act, 1961 on the ground that any payment in excess of Rs.72,000/- was liable to be disallowed, under the said provisions?"

The question is squarely covered by the opinion of this Court on a similar question in C.I.T. v. Rohit Mills Limited, reported in 219 ITR 228, in which my esteemed Brother, speaking for the Bench, opined that the term 'remuneration' was of a wider import than salary and that what was to be calculated in respect of a Director while computing the ceiling of "allowable expenditure", within the meaning of Section 40(c) is remuneration or benefit or amenity provided for the Director by the Company. Therefore, the question whether commission falls in 'remuneration or benefit' is to be looked at from that point of view and not from the point of view as to whether commission payable to a Director is 'salary' payable to an employee within the meaning of Section 40A(5). Following the said decision in Rohit Mills Limited (*supra*), we answer the question referred to us in the affirmative, in favour of the Revenue and against the Assessee. Reference stands disposed of accordingly.

(apj)